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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,324	12/12/2003	David L. Graumann	884.070US2	1376
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SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER	
			WHIPPLE, BRIAN P	
		ART UNIT	PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/734,324	Applicant(s) GRAUMANN ET AL.
	Examiner Brian P. Whipple	Art Unit 2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 December 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-41 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. Claims 1-41 are pending in this application and presented for examination.

Response to Arguments

2. Applicant's arguments, see page 10, filed 12/26/07, with respect to the claim objections have been fully considered and are persuasive. The claim objections have been withdrawn.

3. Applicant's arguments filed 12/26/07 with respect to the 35 U.S.C. 102(e) rejection of claim 1 have been fully considered but they are not persuasive.

4. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

5. Applicant's remaining arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2, 4-13, 15-24, 26-28, 30-38, and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graf, U.S. Patent No. 6,085,221, in view of what was well known in the art, with Craft, U.S. Patent No. 6,272,566 B1 providing evidence.

8. As to claim 1, Graf discloses a system comprising:
an under-run forecasting mechanism to estimate a time at which a supply of received data packets will be exhausted to generate an under-run predicted time (Fig. 4; Col. 6, ln. 44-59);

a statistics exhaustion monitoring mechanism to measure fluctuations in arrival of data packets, from a network, to the supply of received data packets (Fig. 4; Col. 6, ln. 44-59);
and

a playback queuing mechanism to first process the received data packets from the network to provide the received data packets to the under-run forecasting mechanism (Col. 7, ln. 29-30; Col. 8, ln. 1-14) and to build latency in the supply of received data packets based

on the under-run predicted time and the measured fluctuations in arrival of data packets (Col. 2, ln. 42-51; Col. 5, ln. 47-54; Col. 7, ln. 10-25).

Graf discloses the invention substantially but is silent on the data packets being received from a server;

wherein the under-run forecasting mechanism, the statistics monitoring mechanism, and the playback queuing mechanism are separate from the server.

Official Notice (see MPEP 2144.03) is taken that it was well known in the art to receive data packets from a server and to include a network monitor, analyzer, streamer, buffer, etc. separately from a server itself.

Additionally, Craft discloses including services in a device separate from the server itself (Fig. 1, items 104 and 110; Col. 2, ln. 57-59).

Furthermore, the language of claim 1 does not exclude the mechanisms from being in a server. It merely indicates that the received data packets come from a server. This may be a second server. For example, one server in a server farm sending packets to a server such as that disclosed by Graf would cover the scenario of claim 1.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Graf by receiving data packets from a server and including the mechanisms separately from the server as is well known in the art in order to provide a dedicated system for such purposes and not bogging down the server itself.

9. As to claims 12, 19, 30, and 33, the claims are rejected for the same reasons as claim 1 above.

10. As to claim 2, Graf discloses the system is adapted to send data packets from the playback queuing mechanism to a client on a network to play data from the data packets (Fig. 5).

11. As to claims 13, 28, and 38, the claims are rejected for the same reasons as claim 2 above.

12. As to claim 4, Graf discloses each received data packet in the supply of received data packets includes data representing a part of a multimedia stream (Col. 6, ln. 10-16).

13. As to claims 5, 15-16, 32, and 41, the claims are rejected for the same reasons as claim 4 above.

14. As to claim 6, Graf discloses the under-run forecasting mechanism is adapted to update the under-run predicted time (Fig. 3-4; Col. 5, ln. 66 – Col. 6, ln. 9; Col. 7, ln. 29-30).

15. As to claim 7, Graf discloses the under-run forecasting mechanism is adapted to update the under-run predicted time based on a calculation of a time duration for a playback device to complete playing data provided to the playback device (Col. 8, ln. 1-14; Col. 7, ln. 29-30).
16. As to claim 8, Graf discloses the playback queuing mechanism includes a switch to select a latency-building mode or a streaming mode (Col. 5, ln. 47-54; Col. 5, ln. 66 – Col. 6, ln. 9; Col. 7, ln. 10-25).
17. As to claim 9, Graf discloses a decision-based logic to determine a target latency (Col. 7, ln. 10-25).
18. As to claim 10, Graf discloses the system further includes decision-based logic to determine a target latency based on a time difference between an updated under-run predicted time and an absolute system time (Col. 5, ln. 66 – Col. 6, ln. 43; The receiver-delay D and a timestamp are used.)
19. As to claims 22 and 36, the claims are rejected for the same reasons as claim 10 above.

20. As to claims 24 and 37, the claims are rejected for the same reasons as claims 1 and 10 above.
21. As to claim 11, Graf discloses a playback device to play data from the data packets (Abstract, ln. 18-23; Fig. 5).
22. As to claims 18, 31, and 40, the claims are rejected for the same reasons as claim 11 above.
23. As to claim 17, Graf discloses the system is a computer (Fig. 5).
24. As to claim 20, Graf discloses building latency in the supply of data packets if the supply of data packets is less than a target latency (Col. 6, ln. 44-59; Col. 7, ln. 10-25).
25. As to claim 34, the claim is rejected for the same reasons as claim 20 above.

26. As to claim 26, Graf discloses measuring fluctuations in arrival of data packets to the supply of data packets includes monitoring a characteristic of previously predicted under-run times (Fig. 4; Col. 6, ln. 44-59).

27. As to claim 21, Graf and what was well known in the art disclose the invention substantially as in parent claim 19, including imposing no queuing if it is determined that building latency in the supply of data packets requires queuing data at a level more than a threshold amount to maintain a stable stream of data (Graf: Col. 6, ln. 44-59; Col. 8, ln. 52-53).

It is inherent that no queuing is required if the supply of packets is within the ability of the client to stream.

If the applicant disagrees with the inherency reasoning, Official Notice is taken that not queuing a stream if the client supports immediate display without jitter is well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Graf by not delaying a stream when the client can support immediate playback as is well known in the art in order to avoid unnecessary delays.

28. As to claims 27 and 35, the claims are rejected for the same reasons as claim 21 above.

29. As to claim 23, the claim is rejected for the same reasons as claim 10 above.

Graf discloses adjusting a target latency based on the under-run predicted time and an absolute system time as discussed for claim 10 above. Graf is silent on adjusting said target latency based on a value twice a standard deviation.

Official Notice is taken that varying a value by in terms of standard deviation is well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Graf by adjusting a value by standard deviations as is well known in the art in order to increase the room for error in calculating a target latency for the purpose of avoiding buffer underflow.

30. Claims 3, 14, 29, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graf and what was well known in the art as applied to claims 1, 12, 19, and 33 above, further in view of Rostoker et al. (Rostoker), U.S. Patent No. 5,784,572.

31. As to claim 3, Graf and what was well known in the art disclose the invention substantially as in parent claim 1, including the system is adapted to send data packets from the playback queuing mechanism to forward the data packets to client on the network to

play data from the data packets (see claim 2 above), but is silent on a mixer forwarding the data packets.

However, Rostoker discloses a mixer forwarding the data packets (Fig. 1, item 24; Col. 3, ln. 12-14).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Graf and what was well known in the art by having a mixer forward the data packets as taught by Rostoker in order to combine audio and video for presentation as a single stream (Rostoker: Col. 3, ln. 12-14) where the motivation to initially separate them is in order to provide different compression standards for the audio and video data (Rostoker: Abstract) for the purpose of meeting bandwidth limitations (Rostoker: Abstract).

32. As to claims 14, 29, and 39, the claims are rejected for the same reasons as claim 3 above.

33. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graf and what was well known in the art as applied to claim 19 above, in view of Craft, U.S. Patent No. 6,272,566 B1.

34. As to claim 25, Graf and what was well known in the art disclose the invention substantially as in parent claim 19, but is silent on flushing stale data caught in the building of latency.

However, Craft discloses flushing stale data caught in the building of latency (Col. 4, ln. 51-53).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Graf and what was well known in the art by flushing stale data caught in the building of latency as taught by Craft in order to cease use of buffering when it is no longer needed and continue to play a stream seamlessly (Craft: Col. 4, ln. 51-53).

Conclusion

35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened

statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Whipple whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple
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Examiner, Art Unit 2152
3/5/08

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